

Remarks

Claims 1-11 are pending in the application. Claims 1 and 4 have been amended. No new matter has been added.

Drawings:

The drawings are objected to under 37 CFR §1.83(a). The Examiner states that the “drive devices of claims 7 and 8 must be shown or the feature(s) canceled from the claim(s).” The Examiner has requested drawing sheets in compliance with 37 CFR §1.121(d).

Applicant has made the appropriate corrections in compliance with 37 C.F.R. §1.121(d) on the attached replacement drawing sheets containing Figures 1 and 5-8.

Support for the modifications to Figures 1 and 5-7 can be found in paragraphs [0038], [0040], and [0043] of the application, as filed. Paragraph [0038] reads, in part, “the clip 22 of the attachment device 9 is joined with its corresponding ends to a convertible-top main support 23 arranged in the side area of the vehicle, on which a drive device (not further shown) engages and drives the convertible-top rod 5.” Paragraph [0040] reads, in part, “[t]he clamping device 13 connected to the convertible-top rod 5 and thereby to the main convertible-top support 23...is movable by means of the drive device (not further shown) that drives the convertible-top rods 5...” Paragraph [0044] reads, in part, “a single clip be connected as in FIG. 8 to the convertible-top rod 5 without its own drive.”

Support for the modification to Figure 8 can be found in paragraphs [0043] and [0044] of the application, as filed. Paragraph [0043] reads, in part, “a separate drive for bracket 25 is provided here, which can be controlled as a function of the motion of the convertible-top rod 5.” Paragraph [0044] reads, in part, “the clamping device 13 depicted in FIG. 1 through FIG. 7, is equipped with a separate drive...”

As such, no new matter has been added. Paragraphs [0038], [0040], and [0043] have been amended to associate the “drive device” with an indicator number 28, as shown in the amended Figures 1 and 5-8. Paragraphs [0043] and [0044] have also been amended to associate the “separate drive” with an indicator number 30, as shown in Figure 8.

In addition, paragraphs [0020] and [0024]-[0027] have been amended to include the schematic relationship that is now shown in Figures 1 and 5-8, as amended. As such, no new matter has been added.

Claim Rejections – 35 USC §112:

Claim 4 is rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Examiner states that there is insufficient antecedent basis in Claim 4 that recites the limitation “the side bracket”. The Applicant has amended claim 4 to overcome this rejection. Withdrawal of this rejection is respectfully requested.

Claim 7 is rejected under 35 USC §112, first and second paragraph, for not being enabling with respect to the separate drives. The Examiner states that “it is unclear what the separate drive devices refer to, and how known drive devices (such as hydraulic actuators) would be used to control the convertible top through the at least one bracket.” As stated above, the Applicant has amended Figure 8 and paragraphs [0043] and [0044] to associate the indicator number 30 with the “separate drive”, as distinguished from indicator number 28 for the “drive device”. Paragraph [0043] of the specification, as filed, recites, in part, “[i]n contrast to the variant according to FIG. 1 through FIG. 7, a separate drive for bracket 25 is provided here, which can be controlled as a function of the motion of the convertible-top rod 5.” [Emphasis added]. Referring now to paragraph [0042], “[i]n contrast to the variant according to FIG. 1 through FIG. 7, with two side brackets 14, 15, the clamping device 13’ depicted in FIG. 8 is designed with a single bracket 25...like the clip 22 of the attachment device 9, and is joined on its ends to the corresponding side main convertible-top support 23.” Paragraph [0042] also states that “[i]n its rear area, in the region of the transition between the side arms to the cross-arm of the U-shaped bracket 25, this bracket is connected on both sides by means of a toggle lever 26 and 27 to the clip 22 of the attachment device 9 and is thereby attached to the body.” The side brackets 14, 15 are described in paragraph [0039] as being “articulated at their ends on the vehicle front by means of a toggle lever 24 and the convertible-top rod 5 to the main convertible-top support 23...” Therefore, the separate drive 30 and the convertible-top rod 5 are indirectly interconnected via the side brackets 14, 15, the toggle levers 26, 27, and the U-shaped bracket 25. As such, movement of either the separate drive 30 or the convertible-top rod 5 is a function

of the other of the separate drive 30 and the convertible-top rod 5. Withdrawal of this rejection is respectfully requested.

Claims Rejections – 35 USC §102:

Claims 1-11 are rejected under 35 USC §102(b) as being anticipated by US Patent No. 4,708,389 to Maebayashi et al.

With respect to claim 1, the Examiner states that Figure 4C of Maebayashi et al. discloses, in part, “a top for a convertible vehicle with a flexible roof panel (15), which is attached to an arrangement of convertible-top rods (13) and, in its rear area, to an attachment device (61, 62) of the vehicle body (56), in which a clamping device (32), acting on the flexible roof panel in the region of its attachment to the vehicle body in the closed state of the convertible top, is provided, said clamping device being designed with at least one bracket that forces the flexible roof panel in the closed state of the convertible top against an auto-body closure seal (63), characterized in that the at least one bracket is pivotable with its rearward end around an articulation (32a) attached to the vehicle body.”

For a rejection grounded in anticipation under §102 to be proper, every element and limitation recited in the rejected claim(s) must be found in the cited 102 reference. *See MPEP § 2131.* “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Id.*, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). *See also, In re Paulsen*, 30 F.3d 1475 (Fed. Cir. 1994). The MPEP restricts the prior art that may be cited by an Examiner in making a § 102(b) rejection to those where the “identical invention [is] shown in as complete detail as is contained in the ... [rejected] claim.” *Id.*, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

The claimed invention is not anticipated. Claim 1 has been amended to recite, in part “that the at least one bracket (14, 15, 25) is pivotable with its *rearward end* around an articulation (20, 21, 26, 27) directly attached to the vehicle body.” [emphasis added]. Maebayashi et al. does not disclose that at least one bracket is pivotable with its rearward end around an articulation that is attached to the vehicle body, as recited in claim 1. Instead,

Maebayashi et al. discloses that “[t]he front link 32 has a[n] [articulation] 32a pivotably connected with a rear end 9a of the plate 9.” See col. 6, lines 10-12. When a portion of the roof 13 is moved rearward, “the front link 32 is lowered through a rearward swinging movement of the plate 9.” See col. 6, lines 16-19. When the front link 32 is lowered, the articulation 32a of front link 32 is also lowered relative to the vehicle body, as indicated by the phantom lines in Figures 5 and 8. Therefore, because the articulation 32a of the front link 32 is lowered relative to the vehicle body, the articulation cannot be *directly attached* to the vehicle body and the *rearward end* of the bracket cannot be pivotable around the articulation. Accordingly, claim 1 is allowable for at least this reason.

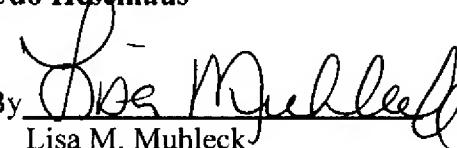
Additionally, claims 2-11, which depend from allowable claim 1, are also allowable for at least the same reason that claim 1 is allowable. Therefore, withdrawal of the rejection of claims 2-11 are respectfully requested.

Conclusion

All rejections and objections having been addressed, it is therefore respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited.

Respectfully submitted,

Udo Heselhaus

By 

Lisa M. Muhleck

Reg. No. 61,710

Date: 7/8/08

QUINN LAW GROUP, PLLC
39555 Orchard Hill Place, Ste. 520
Novi, Michigan 48375
Phone: 248-380-9300
Fax: 248-380-8968